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06 UNITED STATES DISTRICT COURT
07 WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

08 PAUL LEEMON CLARK,) CASE NO. C08-0449-MJP
09 Plaintiff,)
10 v.) REPORT AND RECOMMENDATION
11 SCOTT SCHMIDT,)
12 Defendant.)
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14 Plaintiff is currently incarcerated in the Regional Justice Center in Kent, Washington. He
15 has submitted a civil rights complaint pursuant to 42 U.S.C. § 1983, along with an application for
16 leave to proceed *in forma pauperis* (“IFP application”). In his proposed complaint, plaintiff
17 asserts that he has been in custody since June 28, 2007, awaiting trial on unspecified criminal
18 charges. (Complaint at 3). Plaintiff alleges that his right to a speedy trial under the Constitution
19 has been violated and he blames his former defense counsel, Scott Schmidt, for the delay. Mr.
20 Schmidt is the sole defendant in this case.¹

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22 ¹ The Court notes that plaintiff has filed three other actions in which he raises a speedy trial
claim but against different defendants: *Clark v. State of Washington*, Case No. C08-006-JCC

01 The undersigned United States Magistrate Judge has reviewed the complaint pursuant to
02 28 U.S.C. § 1915A, and concludes that the complaint falls short of the allegations necessary to
03 state a claim for relief. When public defenders are acting in their role as advocate, they are not
04 acting under color of state law for § 1983 purposes. *See Georgia v. McCollum*, 505 U.S. 42, 53
05 (1992). Here, plaintiff's sole allegation – that Mr. Schmidt failed to enforce plaintiff's right to a
06 speedy trial – concerns Mr. Schmidt's role as an advocate. Accordingly, Mr. Schmidt is not a
07 state actor for purposes of § 1983 and cannot be a defendant in the present action.

08 In light of this deficiency, plaintiff's complaint fails to state a claim upon which relief can
09 be granted. In addition, it appears that it would be futile to grant plaintiff leave to amend the
10 complaint. Accordingly, the complaint should be dismissed and the IFP application denied as
11 moot. A proposed Order reflecting this recommendation is attached.

12 DATED this 25th day of March, 2008.

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14 Mary Alice Theiler
15 United States Magistrate Judge
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22 (dismissed on February 5, 2008); *Clark v. Abbott*, Case No. C08-259-RSM (Report and
Recommendation pending); *Clark v. King County Superior Court*, Case No. C08-350-RSL-MAT.